IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/02/2003

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THE HONOURABLE MR.JUSTICE A.PACKIARAJ

CRL.R.C.No.509 of 2000

Ramalingam .. Petitioner.

-Vs-

State represented by Station
House Officer, Grand Bazaar
Police Station, Pondicherry. .. Respondent.

For Petitioner: Mr.P.V.S.Giridhar

For Respondent: Mr.A.P.Suryaprakasam
Additional PP (Pondy)

Prayer: Revision against the judgment of the Principal Sessions Judge, Pondicherry in Crl.Appeal N.10 of 1998 dated 30.11.1999, confirming the judgment of Chief Judicial Magistrate, Pondicherry in STR No.578 /93 dated 17.2.98 convicting the petitioner under

:O R D E R

On being aggrieved by the conviction and sentence imposed by the learned Principal Sessions Judge, Pondicherry, dated 30.11.1999, confirming the judgment passed by the learned Chief Judicial Magistrate, Pondicherry in STR.No.578/93 dated 17.2.98, sentencing the petitioner herein to undergo imprisonment till rising of the Court and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment, for an offence under Section 182 IPC, the present revision has been preferred.

2. The brief facts of the prosecution case is that Ramalingam, the respondent herein lodged a First Information Report with the Inspector of Police PCR Cell on 15.12.1993 at about 5.00 p.m stating that one Sekar and Radhakrishnan abused him by using his caste name which attracted the provisions of the Protection of Civil Rights Act. The matter was investigated and found to be false. On coming to know that the complaint given by the said Ramalingam is false, the Inspector of Police, PCR Wing filed a petition before the Chief Judicial Magistrate, Pondicherry and sought for permission to register a case for an offence under Section 182 IPC, against the said Ramalingam. But the learned Magistrate dismissing the said application said

that no such permission is needed. But however he has observed to the effect that he shall after obtaining permission from the Superintendent of Police make a complaint before the police officer having jurisdiction to investigate the offence committed within the limits of such police station. Accordingly, the Inspector sought permission from the Superintendent of Police, who apparently is said to have given permission and on the basis of which he filed a complaint before the Inspector of Police, Grand Bazaar police Station, Pondicherry, who investigated the matter and has filed the present charge sheet, which reads as follows:
On 15-2-93 at about 17.00 hrs, the accused Ramalingam gave a First Information Report to the Inspector of Police, PCR Cell, Pondicherry complaining that one Sekar and Radhakrishnan abused him on the grounds of untouchability and requested the Police of Civil Rights Act knowing that it was false complaint intending thereby that the Inspector of Police, PCR Cell, Pondicherry would use his lawful power to the annoyance of the said Sekar and Radhakrishnan, thereby the accused Ramalingam appear to have committed an offence punishable under Section 18 2 IPC.
Hence the charge.
Sd/-(A.KANDANATHAN)
Sub-Inspector of Police
Grand Bazar Police Station
Pondicherry.

The accused contested the trial and as he was found guilty, was punished as mentioned above.

3. The learned counsel appearing for the petitioner in this revision questions the maintainability of the very prosecution case itself, in view of Section 195 Cr.P.C. He also took me through the relevant portions of the Section, which reads as follows:
195. Prosecution for contempt of lawful authority of public servants for offences against public justice and for offences relating to documents given in evidence (1) No Court shall take cognizance -
(a) (i) of any offence punishable under Section 172 to 188 (both inclusive) of the Indian Penal Code, or .....

195(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the court, no further proceedings shall be taken on the complaint:

4. Therefore, it is incumbent on the part of the Inspector of Police PCR who found that the complaint given to him by the accused to be as follows ought to have filed a complaint before the concerned Magistrate and the Magistrate ought to have taken cognizance under Section 190 Cr.P.C

5. But curiously in this case what he has done is that he has filed an application before the Magistrate asking permission to register a crime against the accused for an offence under Section 182 IPC, which also was negatived. Thereafter he had approached the Superintendent of Police, who has

given him permission to do so and in stead of he giving a complaint to the Court, had filed the First Information Report to the Inspector of Police, Grand Bazaar Police Station who registered it as Crime No.408 of 1993 on 01.06.1993 at about 06.30 p.m and investigated the matter and filed the charge sheet. According to the learned counsel the said procedure has no sanction of law and the Magistrate taking cognizance on a police report is illegal.

6. Per contra, the learned Additional Public Prosecutor argued that it is on the observation given by the learned Magistrate to the Inspector of Police, PCR Cell sought permission to register a case against the accused for an offence under Section 182 IPC that he shall get the consent of the Superintendent of Police and filed a complaint with the Inspector of Police, PCR had done so and therefore, the prosecution is maintainable.

7. I am afraid that I am at a loss to understand as to how the argument of learned Additional Public Prosecutor is acceptable. Since the observation of the learned Magistrate cannot supercede or run contra to the specific provisions of Cr.P.C. Section 195 Cr.P.C clearly mandates that the concerned Public servant to whom a police complaint has been lodged can either himself lay a complaint before the Court or his superior officer can file a complaint before the Court. He cannot be asked to give a complaint before any police officer to investigate the matter and file the charge sheet.

8. In support of this, the learned counsel for the petitioner would place before me a decision of the Apex Court reported in Daulat Ram Vs. State of Punjab (1962 (2) Crl.L.J. 286), wherein the facts are more are less identical to that of the present one. In the said case a complaint was given to the Tahsildar, who found the complaint to be false and the Tahsildar in stead of filing a complaint to the Court had filed a complaint against the appellant to the police officer and he in turn had filed a charge sheet.

9. The Apex Court in the said situation has held as follows:
It was therefore incumbent, if the prosecution was to be launched, that the complaint in writing should be made by the Tahsildar as the public servant concerned in this case. On the other hand what we find is that a complaint by the Tahsildar was not filed at all, but a charge sheet was put in by the Station House Officer. The learned counsel for the State Government tries to support the action by submitting that S.195 had been complied with inasmuch as when the allegations had been disproved, the letter of the Superintendent of Police was forwarded to the Tahsildar and he asked for a "a calender"(sic). This paper was filed along with the charge sheet and it is stated that this satisfies the requirements of S.195. In our opinion, this is not a due compliance with the provisions of that section. What the section contemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant namely the Tahsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained.

10. Therefore, in terms of Section 195 Cr.P.C, it is that Public servant or his superior officer who should give a complaint before the Court to take cognizance. Therefore, a police officer of a different police station before whom the PCR Inspector has given a report, filing a charge sheet is illegal and consequently, the entire proceedings are illegal and the conviction and sentence has to be necessarily set aside.
In the result, the revision is allowed. Fine amount, if any, paid shall be directed to be refunded to the petitioner.

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Index:Yes
Internet:Yes

To

1.The Principal Sessions Judge, Pondicherry.

2.The Chief Judicial Magistrate, Pondicherry.

3.The Public Prosecutor, Pondicherry.

4.The Station House Officer,
Grand Bazaar Police Station, Pondicherry.